

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: February 01, 2021

- + W.P.(C) 2846/2017, CM No. 12415/2017
- + W.P.(C) 3910/2017, CM No. 17258/2017
- + W.P.(C) 3915/2017, CM No. 17266/2017

BALJIT SINGH HANDA
PRITHIPAL SINGH SODHI
RAVINDER GOSAIN

..... Petitioner(s)

Through: Mr. Vivek Singh, Advocate.

Versus

PUNJAB & SIND BANK
PUNJAB & SIND BANK
PUNJAB & SIND BANK

..... Respondent(s)

Through: Ms. Kittu Bajaj, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
J U D G M E N T

V. KAMESWAR RAO, J

1. Vide this common order I shall dispose of the three writ petitions being W.P.(C) 2846/2017, W.P.(C) 3910/2017 and W.P.(C) 3915/2017.

2. The common respondent in all three writ petitions is a public sector bank which falls within the definition of the State under Article 12 of the Constitution of India and under the administrative control of the Ministry of Finance.

3. The short issue that arises for consideration in all these petitions is whether departmental proceedings can be initiated

against an employee who has retired from the services of the respondent bank when it is in respect of an event which took place more than four years before the institution of the proceedings, in view of Punjab and Sind Bank (Employees) Pension Regulations, 1995 ('Pension Regulations', for short).

W.P.(C) 2846/2017

4. The petitioner herein joined the services of the respondent Bank on November 07, 1975 as a probationary officer and retired from its services as a Deputy General Manager posted at Chandigarh on October 31, 2012 on attaining superannuation.

5. It is stated by petitioner that on October 12, 2015, respondent Bank issued a show-cause notice to the petitioner asking for his comments on alleged commission of irregularities by him while sanctioning the Cash Credit [Hypothecation] Facilities of Rs. 3.50 Crores and Rs. 2.50 Crores in respect of M/s Bankey Bihari Trading Co. and M/s Rock Hudson Clothing (India) respectively, in his capacity of officiating Deputy General Manager, as the said borrowers defaulted and the lending became sticky leading to the accounts being declared as NPA/fraud for which an FIR was registered.

6. As the show-cause notice dated October 12, 2015, was unserved on the petitioner, it was sent again on April 15, 2016, which was received by the petitioner on April 30, 2016. The petitioner thereafter duly submitted his comments, on May 08, 2016, stating that the said CC facilities were sanctioned in favour of the said two parties on February 13, 2012 and March 03, 2012 respectively after following due procedure, on the

recommendations of the loan committee at the branch/zonal office of the respondent bank and was a *bonafide* commercial decision taken in the normal course of business.

7. It is the case of the petitioner that without considering the comments filed by the petitioner on May 08, 2016, the respondent Bank issued the impugned charge sheet vide memorandum dated August 22, 2016 in terms of Regulation 43 & 45 read with Regulation 48 of the Pension Regulations. The petitioner was thereby asked to submit his statement of defence to the impugned charge sheet.

8. It is stated by the petitioner that even the charge sheet filed by the CBI after detailed investigation was only against the borrower and no evidence whatsoever of any impropriety was observed against the petitioner. It is stated, the CBI observed procedural lapses against the branch manager of the respondent Bank and not against the petitioner.

9. The petitioner's request for inspecting certain documents for filing his statement of defence was allowed by the respondent Bank on October 15, 2016 and the petitioner inspected certain documents at the Delhi Office of the respondent Bank on October 22, 2016. However, according to the petitioner certain documents were not available/provided and a request on behalf of the petitioner for providing those documents was also rejected by the respondent Bank vide communication dated January 16, 2017.

10. However, he has filed this present petition challenging the impugned charge sheet being in violation of the Pension Regulations.

11. I may note here that initially the respondent Bank, in all the three writ petitions took a stand that it was considering formulating a policy relatable to the issue which falls for consideration as recorded in the common order dated September 13, 2017 and subsequently filed Additional Affidavits/Counter Affidavit in all the three writ petitions by relying upon the already existing Pension Regulations itself.

12. In the additional affidavit filed by the respondent Bank, reliance has been placed by the respondent heavily on Regulations 43 and 48 of the Pension Regulations. Regulations 43, 45, 48 and 56 of the Pension Regulations read as under:

“43. Withholding or withdrawal of pension:-

The Competent Authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct:

Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum pension per mensem payable under these regulations.

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45. Pension guilty of grave misconduct

In a case not falling under regulation 44 if the Competent Authority considers that the pensioner is prima facie guilty of grave misconduct, it shall, before

passing an order, follow the procedure specified in Punjab & Sind Bank Officer Employees' (Discipline & Appeal) Regulations, 1982 or in Settlement as the case may be.

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48. Recovery of Pecuniary loss caused to the Bank:-

(1) The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service.

Provided that the Board shall be consulted before any final orders are passed.

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(2) No departmental proceedings, if not instituted while the employee was in service, shall be instituted in respect of an event which took place more than four years before such institution; Provided that the disciplinary proceedings so instituted shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service."

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56. Residuary provisions.

In case of doubt, in the matter of application of these regulations, regard may be had to the corresponding provisions of central Civil Service Rules, 1972 or Central Civil Services (Commutation of Pension) Rules, 1981 applicable for Central Government employees with such exceptions and modifications as the Bank, with the previous sanction of the Central Government, may from time to time determine.”

13. It is stated by the respondent Bank that Regulation 43 envisages withholding/withdrawal of pension if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct. According to the respondent Bank, conviction attracts no limitation and bestows unfettered power to the Competent Authority to withhold/withdraw pension of the convicted ex-employee. The disciplinary action can be initiated for a grave misconduct with the fetter that the event should precede four years from institution.

14. It is stated that the event(s) can be either grave or fraudulent or a concoction thereof. It is also stated, it is not the event simpliciter which gives birth to the charge sheet and that there are many events orchestrated in a manner that the actual event is eclipsed and cannot be detected in normal course of business. The occurrence of an event metamorphoses into another event and then another. Finally, the actionable event happens which unearths the preceding events. The final ‘event’ unearths

and nails the actionable event by the perpetrator(s). It may be a grave misconduct or fraud or both.

15. It is further stated that Regulation 48 is invoked when there is a loss caused to the Bank and on account of the pensioner being convicted or for misconduct warranting recovery of loss from the pension and that the said Regulation does not define the 'event' nor does it put an embargo that the proceedings cannot commence after four years of retirement.

16. It is stated that Regulation 48 merely enumerates an identified 'event' be proceeded within four years and an event *ex-facie* may not be culpable but may ripe into another event which makes even the penultimate event culpable. The final event gives a right to initiate judicial/disciplinary proceedings against the perpetrator.

17. It is stated that the subject matter of the impugned charge sheet is on the basis of two accounts sanctioned fraudulently by the petitioner. The petitioner being the Sanctioning Authority, it is stated that the petitioner was conferred with commerce of Rs 3.00 crores. However, very deftly, petitioner connived with the borrowers and turned a blind eye to their fake records/irregularities and purportedly mortgaged the property (H-5/10 Krishna Nagar, Delhi), projecting it as genuine, in the account, whereas in Staff Accountability Report, it emerged that the property was reported in the RBI Caution Advice. It is also stated the petitioner ignored the genuineness of title deeds, commercial CIBIL reports of the firms (which would have exploded the fraud as the firms were explodingly debt ridden)

and limit of magnitude of Rs. 2.50 crores and Rs. 3.50 crores were sanctioned without ensuring even margin money/arrangement of sources of funds by the party.

18. It is the case of the respondent Bank that since the actions of the petitioner have resulted in the said accounts becoming NPAs, Regulation 48 cannot mean to be an escape route to the superannuated employee who somehow manages to hide his/her acts for four years. In fact, it is stated that the said Regulation imbues grave misconduct/negligence/criminal breach of trust/forgery/acts done fraudulently during the period of employment leading to loss caused to the organization which the employer is empowered to recover from the employee to make good the loss for wilful acts of the employee committed during the employment. As per the respondent Bank, the adroit sanctioning of the huge loans in teeth of fake documents, in complete oblivion of the authenticity of documents and laid down norms are events impregnated with another event of making the account non-performing and impinging loss to the respondent Bank. It is stated that the petitioner himself was the sanctioning authority vested with the commerce of Rs. 3.00 crores and thereby cannot take advantage of his own conduct.

19. Further, it is stated that the RBI vide its statutory circular mandates Staff Accountability Report within six months of an account turning NPA. The staff accountability investigates and unfolds all the events in retro and pins the pertinent grave events. It has the effect of 'zooming in' on the 'grave misconduct' committed by the officer exposing the respondent Bank to loss. If

the event exposes fraud by the borrower or with active connivance of the sanctioning authority, it is stamped by statutory reporting to RBI. In the present case, the staff accountability detected the role of the petitioner and his misconduct in turning of the account NPA and impinging loss to the respondent Bank, calling for disciplinary action against the petitioner. Therefore, according to the respondent Bank, this event of statutory reporting is yet another event requiring the invocation of Regulation 48 or initiation of criminal action or both.

20. It is also the case of the respondent Bank, Regulation 48 of the Pension Regulations envisages Recovery from Pension. It is not merely regulating 'future good conduct' amongst ex-employees but also is a 'preventive legislation' preventing loss to 'national exchequer' by acts of its officers. It is a substantive law empowering the respondent Bank to withhold or withdraw a pension or a part there of, whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service. The proviso thereto is 'directory' as event in each case is variable, dependent on its facts and circumstances. By applying interpretation to a beneficent legislation, a benefit never intended to be conferred cannot be conferred. More so under the Pension Regulations, the employer is not handicapped and can afflict the pension if the superannuated employee is convicted by a criminal

court even after 4 years of his superannuation. Therefore, fraud in national economy cannot be a deterrent for initiating departmental action against a superannuated employee merely because he took subterfuge under his clever act of managing non-detection.

21. It is also stated that the Regulation 48(2), capping four years of happening of event, is not intended to make the fraud pass. Banks are custodians of public funds. They shoulder and encompass the entire economy of the country. Therefore, ill motivated Bankers who themselves indulge into fraud, manoeuvre to keep their actions under wraps and then binge on immunity citing non detection for four years, cannot be protected by law as they never had clean hands and law does not aid the fraudulent.

22. Drawing an analogy between departmental action being akin to criminal law, it is stated that the right to take action is reckoned from the date 'crime' is detected and not when 'crime' was committed and that there was no unconscionable delay in investigation and prosecution on the facts of the case. It is stated that in criminal law the period of limitation is computed from the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a Court. In the present case also, the staff accountability was fixed on November 28, 2014 pinpointing the wrong committed by the petitioner and the departmental action was initiated within four years of this 'event'. The petitioner superannuated on October 31, 2012 and the charge sheet issued

on August 22, 2016 is within 4 years of event as well as his retirement. It is also stated that the actions start on the completion of the statutory procedure as contemplated under the RBI guidelines.

23. Further, it is the case of the respondent Bank that the very purpose of sub-regulation 2 of Regulation 48 is to merely give protection to lower rung of employees who had committed *bonafide* simple errors during their employment. However, the preamble of such provision cannot be an extended arm to protect high stature officers who enjoy gregarious powers; gregarious perks, power of attorneys which can put the entire institution to ransom, who pin huge pecuniary loss to the nation and organization by their acts of power, wilful acts of omission and commission and manage non-detection using their position, authority and protocol. The said Regulation cannot become a 'subserving tool' in their hands to glorify their mal-objective. The petitioner being a high stature officer, (mal)enjoying gregarious powers, his acts *prima facie* has jettisoned the very existence of the respondents.

24. Attempt was also made to point out the marked distinction between an 'event' and 'actionable event' accruing from the act(s) of the employee. That is to say, ill sanctioning/grant of loan is an 'event'. It impregnates events within its womb. When the loan is exhausted and the account becomes sticky, account turning NPA is another 'event'. As per statutory RBI policy, staff accountability is to be probed, which is a statutory event. If fraud is detected, classification of fraud and

reporting to RBI is yet another event. The four years period is required to be counted from the 'event' which gives rise to cause of action for disciplinary action thereby ensuring that the final event makes the penultimate events actionable. It also stated that there can be no manner of doubt that making provision with regard to pension falls within the purview of 'conditions of service'. The embargo is spelt out not in the main rule but in the second proviso to the said rule which enjoins that no judicial proceedings, if not instituted while the officer was in service, shall be instituted in respect of an event which took place more than four years before such institution. The scope of a provision is well-settled. The 'event' is the 'actionable event', i.e., account turning NPA and identification of culpability of the perpetrator. The accounts turned NPA have occasioned a tentative loss of Rs.12.80 Cr. as on April 16, 2018 to the respondent Bank.

25. Rejoinder was also duly filed by the petitioner, reiterating its claim in the petition.

W.P.(C) 3910/2017

26. The petitioner herein joined the services of the respondent Bank on November 11, 1975 as a probationary officer and retired from its services as a Asst. General Manager posted at Local Head Office, Chandigarh on August 31, 2012 on attaining superannuation.

27. It is stated by petitioner that on January 07, 2015, respondent Bank issued a show-cause notice to the petitioner asking for his comments on an alleged commission of irregularities by him, being a member of the loan committee at

Local Head Office, which recommended for sanction of enhancement of the ODP limit from Rs.10 crores to Rs.14 Crores in respect of M/s Gupta & Co.; sanction of enhancement of ODP Limit of Rs 22 crores and BG of Rs. 2 Crores in respect of M/s Aakriti Construction and Development Ltd.; Chandigarh Trading Co.; for sanction of the BG limit of Rs. 4 Crores in respect of M/s Gupta & Co.; Chandigarh; and sanction for ODP limit of Rs.11.6 in respect of M/s Sundeep & Co., Chandigarh on August 29, 2011, September 29, 2011, March 30, 2012 and June 14, 2012, respectively, as the said borrowers defaulted and the lending became sticky leading to the accounts being declared as NPA.

28. It is stated that the petitioner submitted its comments on March 28, 2015 *inter alia* stating, the grant of the above stated facilities were nothing but a *bonafide* commercial decision taken in normal course of the business as there existed no adverse report about any credibility, conduct and operation of the borrowers from any quarter. It is the case of the petitioner that it was also stated in his comments that the recommendations were made on the basis of collective decision of the loan committees.

29. It is the case of the petitioner that without considering the comments filed by the petitioner on March 28, 2015, the respondent Bank issued the impugned charge sheet vide memorandum dated November 15, 2016 in terms of Regulation 43 & 45 read with Regulation 48 of the Pension Regulations. The petitioner was thereby asked to submit his statement of defence to the impugned charge sheet.

30. Reply to the impugned charge sheet was submitted by the

petitioner on December 17, 2016 pointing out that the issuance of charge sheet/initiation of departmental proceedings were not permissible under the Pension Rules after four years of happening of the event and after retirement.

31. It is stated by the petitioner, even after pointing out the illegality in the actions of the respondent Bank vide his above reply, the respondent Bank went ahead in appointing an enquiry officer and presenting officer to conduct departmental proceedings on April 12, 2017.

32. Counter Affidavit was filed by the respondent Bank. The contents and stand taken by the respondent Bank is akin to what has been reproduced above in W.P.(C) 2846/2017. However, the facts leading to the issuance of the impugned charge sheet being different, I shall in brief state the case of the respondent bank in that regard.

33. The subject matter of the charges sheet are three accounts which were sanctioned fraudulently by the petitioner. It is stated by the respondent bank that the petitioner being the Recommending Authority, conferred with the power of ascertaining correct facts and then recommending the case to the Sanctioning Authority, was armed with correct facts, so that he can take plausible decision on the facts and circumstances. The Sanctioning Authority is an extended arm of the management. The Recommending Authority is believed to act diligently, *bonafidely*, unless proved otherwise.

34. However, very deftly, it is the case of the respondent Bank that the petitioner connived with the Sanctioning Authority

and turned a blind eye to the violation of the terms of sanction by the borrower to the already availed loan of Rs.22.10 crore; unsatisfactory operations in the account, frequent overdrawings beyond the sanctioned limits ; fictitious credit entries to group accounts of M/s Aakriti Constructions and Developments Ltd. ; wrong facts were placed before the Sanctioning Authority , the security was calculatedly overvalued with active connivance of Approved valuers; and projected as correct by the petitioner to facilitate higher credit limits to the party. He did not delve into the genuineness of title deeds, commercial CIBIL reports of the firms (which would have exploded the fraud as the firms were explodingly debt ridden) and limit of magnitude of Rs. 22.10 crores to M/s Aakriti Constructions, Rs. 11.60 crores to M/s Sundeep & Co. and Rs. 14.00 crores to M/s Gupta & Co. got sanctioned, on April 18, 2011, June 14, 2012 and August 30, 2011, respectively.

35. Owing to the aforesaid alleged actions/ inactions (event) of the petitioner, the accounts, envisaged in the charge sheet, became NPA, another event, on March 31, 2013. It is held that since NPA statutorily mandated an in-depth inquiry into the accounts including the Staff Accountability. An Assistant General Manager, with the assistance of three senior managers was assigned the job of fixing Staff Accountability. Staff Accountability reports pertaining to the three accounts were submitted by the Committee on January 29, 2014, February 6, 2014 and February 10, 2014, respectively. As per RBI norms, these reports were placed before a committee of three General

Managers who approved the same. In other words, the event of *malafide* sanctioning ripened into the event of accounts turning NPA.

36. The petitioner's comments were called vide letter dated January 07, 2015, to which he submitted his reply dated March 28, 2015. His reply was considered and the matter was referred to Internal Advisory Committee (IAC). Upon compliance of due procedure envisaged, a charge sheet was issued to the petitioner on November 15, 2016. Thus, the actionable event took place on March 31, 2013 when the account turned NPA. The charge sheet dated November 15, 2016 is thus within 4 years of these events. It is also stated that the balance outstanding in these accounts is more than Rs. 118 crores which will result in a huge tentative loss to the Bank.

37. Rejoinder was also duly filed by the petitioner, reiterating its claim in the petition.

W.P.(C) 3915/2017

38. The petitioner herein joined the services of the respondent Bank on May 05, 1975 as clerk cum cashier and retired from its services as a General Manager posted on December 31, 2012 on attaining superannuation.

39. It is stated by petitioner that on January 07, 2015, respondent Bank issued a show-cause notice to the petitioner asking for his comments on an alleged commission of irregularities by him, being the chairperson member of the loan committee at Local Head Office, which recommended for sanction of enhancement of the ODP limit from Rs. 10 crores to

Rs 14 Crores in respect of M/s Gupta & Co., sanction of enhancement of ODP Limit of Rs 22 crores and BG of Rs. 2 Crores in respect of M/s Aakriti Construction and Development Ltd., Chandigarh Trading Co., and sanction for ODP limit of Rs.11.6 in respect of M/s Sundeep & Co., Chandigarh on August 30, 2011, September 29, 2011 and June 14, 2012 respectively; as the said borrowers defaulted and the lending became sticky leading to the accounts being declared as NPA. The show-cause notice also sought comments from the petitioner with regard to sanction of a BG limit of Rs. 4 crores in respect of M/s Gupta & Co., Chandigarh by him and it is stated by the petitioner that the said BG was not availed by the party.

40. It is stated that the petitioner submitted its comments on March 28, 2015 *inter alia* stating the grant of the above stated facilities were nothing but a *bonafide* commercial decision taken in normal course of the business as there existed no adverse report about any credibility, conduct and operation of the borrowers from any quarter. It is the case of the petitioner that it was also stated in his comments that the recommendations were made on the basis of collective decision of the loan committees, following due procedure.

41. It is the case of the petitioner that without considering the comments filed by the petitioner on May 28, 2015, the respondent Bank issued the impugned charge sheet vide memorandum dated December 03, 2016 in terms of Regulation 43 & 45 read with Regulation 48 of the Pension Regulations. The petitioner was thereby asked to submit his statement of defence to

the impugned charge sheet.

42. Reply to the impugned charge sheet was submitted by the petitioner on December 22, 2016 pointing out that the issuance of charge sheet/ initiation of departmental proceedings was not permissible under the Pension Rules after four years of happening of the event and after retirement.

43. It is stated by the petitioner, even after pointing out the illegality in the actions of the respondent Bank vide his above reply, the respondent Bank went ahead in appointing an enquiry officer and presenting officer to conduct departmental proceedings on April 12, 2017.

44. Additional Affidavit was filed by the respondent Bank. The contents and stand taken by the respondent Bank is akin to what has been reproduced above in W.P.(C) 2846/2017.

45. The facts leading to the issuance of the impugned charge sheet are also similar to facts stated in W.P.(C) 3910/2017 to the extent that the charge sheet pertains to the same accounts. However, since the petitioner herein was associated in a different designation/capacity with the respondent Bank as compared to the petitioner in W.P.(C) 3910/2017, I shall state the case of the respondent Bank in that regard which differs from what has been reproduced above.

46. It is stated that out of the three accounts, he was the Recommending Authority and in few, the Sanctioning Authority. As a Recommending Authority, he was to ascertain from the records and project true picture to the Sanctioning Authority so that funds were not put at stake. It is also stated that the petitioner

being hand in gloves with the borrowers, projected wrong facts to the Sanctioning Authority and succeeded in getting many sanctions for the party. As Sanctioning Authority, petitioner turned a blind eye to credit rating of the borrower, his overdrawn, valuation of the properties, irregular accounts, CIBIL report and colluded with the Branch Manager and sanctioned Rs.11.60 crores to M/s. Sandeep & Co. and Rs.14 crores to M/S Gupta & Co. on June 14, 2012 and August 30, 2011 respectively. Owing to the aforesaid alleged actions/inactions (event) of the petitioner, the accounts, envisaged in the charge sheet, became NPA, another event, on March 31, 2013. In other words, the event of *malafide* acts ripened into the event of account turning NPA.

47. Rejoinder was also duly filed by the petitioner, reiterating its claim in the petition.

Submissions of the counsels for the parties.

48. Mr. Vivek Singh, learned Counsel appearing on behalf of the petitioners stated that the challenge in these writ petitions is with regard to the departmental proceedings initiated in respect of an event which took place more than four years before the institution of the proceedings and after the retirement of the petitioner from the services of the respondent Bank.

49. According to him, Regulation 48 of Pension Regulations under which the petitioners have been charged clearly provide that no departmental or judicial proceedings, if not initiated while the employee was in service, shall be instituted in respect of a cause of action which arose or in respect of an event which took

place more than four years before such institution. The statement of allegations in the charge sheet itself charges the petitioner for having committed irregularities while sanctioning the enhancement of the Credit facilities and the last instance being more than four years preceding the date of the charge sheet. Therefore, the alleged cause of action/ event took place more than four years before the institution of the departmental proceedings by issuance of charge sheet, and therefore such institution is not permissible under the rules.

50. Reliance is also placed on Regulation 56 of Pension Regulations to contend that the said Regulation provides that in case of doubt, in the matter of application of these regulations, regard may be had to the corresponding provisions of Central Civil Service Rules, 1972 ('CCS Rules', for short). Rule 9 of the CCS Rules which is analogous to Regulation 48 of the Pension Regulations of the respondent Bank provides that departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the pensioner. In this regard he has relied upon the Apex Court judgment in ***UCO Bank v. Rajinder Lal Capoor, MANU/SC/7810/2007***, wherein it was held that departmental proceedings are initiated only with the issuance of charge sheet. However, in this case, it is his submission that the same was issued to the petitioner after 4 years and therefore the departmental proceedings against the petitioners are not permissible.

51. In furtherance, it is submitted by him that the date of 'subsequent event' is not relevant but relevant is the 'date of

event’ and acceptance of the stand of the respondent Bank would completely erode the concept of limitation. Mr. Singh submitted that the case of the respondent Bank is nothing but a self-created, vindictive device to harass/victimize retired employees by interpreting the date of NPA as a cause of action.

52. It is submitted by Mr. Singh that the impugned charge sheets in all the three writ petitions are issued in terms of Regulations 43 & 45 read with Regulation 48 of the Pension Regulations. He submitted that as per Regulation 43 of Pension Regulations, the Competent Authority may withdraw or withhold pension or part thereof, whether permanently or for specified period if the pensioner is convicted of serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct and Regulation 45 prescribes the procedure to be followed before it is concluded that pensioner is guilty of grave misconduct. The Regulations 43 & 45 have to be read in conjunction with Regulation 48 and the Regulation 48(2) deals with the clause relating to limitation of departmental action to be taken against pensioner which states, *“No departmental proceedings if not instituted while the employee was in service, shall be instituted in respect of an event which took place more than 4 years before such institution”*. That the aforesaid regulation restricts the competent authority to initiate departmental proceedings against pensioner after 4 years of such institution.

53. It is submitted by Mr. Singh that the cause of action emerges from the date on which some ‘action’ has been initiated

by the petitioner and that the impugned charge sheets in all the three writ petitions are based on the 'action/conduct' on that date and not on the date when the accounts mentioned under the three writ petitions turned NPAs as alleged. In this regard, attention is also drawn to the judgment of this Court in ***Harpreet Singh Makkar v. Punjab and Sind Bank***, MANU/DE/2382/2015, to vehemently contend that the period of four years has to be calculated from the *date of event* and the date of event is the *date of sanction/recommendation of a proposal*. Reliance is also placed on Staff Accountability Policy conveyed vide *HO Law Cir. 133* and as per Pension Regulations (Regulation 48(2)). Thus, according to him, the stand of the respondent Bank that the cause of action being date of accounts/facilities becoming NPAs for initiating disciplinary action proceedings is untenable.

54. Mr. Singh also stated that the ***Harpreet Singh Makkar*** (*supra*) has been upheld by the Division Bench of this Hon'ble Court in ***Punjab and Sind Bank vs. Nand Lal Phatnani and Ors.***, 223 (2015) DLT 589, wherein the charge sheets/disciplinary proceedings were held to be not maintainable as the said charge sheets were time barred in view of Regulation 48(2).

55. Ms. Kittu Bajaj, learned counsel appearing for the respondent Bank, at the outset tried to draw a distinction between what has been contemplated as an 'act' and an 'event' under Regulation 48 of the Pension Regulations. According to her, the embargo upon initiation of proceedings under Regulation 48 of the Pension Regulations is to be computed from the date of 'event' and not the 'act'.

56. It is submitted by her that the 'event' as defined in Black's law Dictionary, is the final culmination of one or more acts. The recording of the loan accounts as NPAs and the ensuing probe into them is mandated under the RBI directives, which was also approved by the Constitutional Bench of the Apex Court in *Central Bank of India vs. Ravindra and Ors.*, AIR 2001 SC 3095.

57. Ms. Bajaj stated that the detection of various acts of the petitioners, who were final sanctioning authorities of the respondent Bank was indeed impossible till the occurrence of the 'event' of NPAs. She also stated that the relationship between 'act' and the 'event' is of the 'cause' and 'effect', both being two ends of the same chain of occurrences. Further, she stated that often the 'act' and 'event' may be in such close proximity on the timeline that they may occur as overlapping to the naked eye. In this regard she pointed out to an example, in the nature of embezzlement, the act of bribe instantly culminates into the 'event' of loss. With regard to the case in hand, it is her submission that as opposed to the example stated, huge loss to the respondent Bank was sequential to as well as the result of misdeeds, corrupt acts and the misconduct of the petitioners which culminated into loss after an interval of time. In banking practice, especially in loans, the 'event' of loss stands separated from 'acts' that have produced it.

58. On the interpretation of limitation clauses under all statutes including the Limitation Act, 1963, it is submitted by Ms. Bajaj that knowledge of the fact is an inalienable aspect, though

no statute expressly provides it. According to her, knowledge is embedded into the language of all provisions of limitation with no exceptions and is thus to be read into it. Without prejudice to other pleas of the respondent Bank, it is also stated that even in cases where 'event' has close proximity in time to the 'acts' or both are overlapping, knowledge of the 'act' itself is the chief ingredient and the starting point for computation of limitation. It is further submitted that the sole and ostensible purpose of providing limitation of 4 years in proceedings against retired employees of the bank, is to guard against laxity of the management. In the matters in hand, same is not the case and that the respondent Bank has pleaded specifically and has shown that it was not aware of the acts/misconduct of the petitioners till Staff Accountability Report has reported it after loan accounts going NPAs. The petitioners have not denied or countered this plea at all.

59. On the purport of Regulation 48 of Pension Regulations, it is submitted by Ms. Bajaj that the said provision has been envisaged for recovery of losses caused to the respondent Bank by the delinquent officer. Thus, the 'losses' to the Bank are the very 'essence' of the term 'event'. The 'losses' owing to the acts of the petitioners came to light on the accounts turning NPAs [statutory event]. Thereafter owing to statutory probe into the reason for account turning NPA revealed the involvement of the petitioners. This mandate, as per RBI directives is called 'Staff Accountability'. Thus NPA, at the lowest level of detection, would constitute the 'event' and the limitation of four years

would be computed from the 'event'. On the account turning NPA, the Banks, as per RBI directives treats it as a loss. The loan accounts becoming bad slipping into NPAs, causing huge losses to the respondent Bank is the 'event' and not the various 'acts' of the petitioners that have finally culminated into NPAs. Sub-regulation (2) of Regulation 48 has to be read within the framework and in the light of the intent of the framers not in abrogation of the same.

60. She submitted that the bare reading of Regulation 48 suggests that the occurrence of 'event' even after retirement of the officer, is not precluded from the ambit of the said Regulation. Had that been the case, the legislature would have simply provided the embargo from the date of 'retirement' or 'act' or 'misconduct'. A reading of the Regulation sanctions the occurrence of 'event' before and after 'retirement'. However, if the interpretation of the petitioner, where he identifies the 'event' with the 'act' is accepted, there can be no 'event' after retirement of the officer as there can be no 'act' after that. If that is the case, the embargo of limitation in Regulation 48 could have been simply and plainly from the date of retirement instead of the event. This interpretation of the petitioners, according to her leads to an absurdity in law and makes the Regulation otiose.

61. On the hierarchy of the petitioners, it is stated that the petitioners in all the three writ petitions were the highest loan sanctioning authorities and not some lower rung employees and the petitioners were capable of cocealing their acts as they were the authorities who were to bring their acts to the notice of the

respondent Bank. Moreover, it is also submitted by Ms. Bajaj that the loan accounts running in crores and crores, have gone NPAs and recoveries are made impossible because of the 'acts' of acceptance by the petitioners of over inflated and false values of loan securities and disbursement of huge amount of loans to otherwise ineligible parties, huge losses have been caused to the respondent Bank, and the question that would arise is who should pay for the losses, the officers who are responsible for all the bungling or the innocent depositors.

62. It is also submitted by Ms. Bajaj that the devious activities were indulged into by the petitioners at the verge of their retirement and were covering up the losses by managing the NPAs.

63. It is submitted by Ms. Bajaj, without prejudice that the loan accounts going bad, i.e., turning into NPAs is the 'event' that under the framework of RBI directives is what essentially triggered a probe and opened a window for the forensic and discreet inquiry into the NPA account, including the role of Bank Officials. In fact, according to her, the inalienable component of the inquiry- the Staff Accountability Report [SAR] in all the three cases, have specifically indicted the petitioners by name, after which they have been issued show-cause notices and then charge-sheeted. In this regard she submitted that it was wrongly argued by the petitioners before this Court that the petitioners are not named in the SAR. The recording of the loan accounts as NPAs, and the ensuing probe into them, is not an internal affair of the Bank, but is mandated under the RBI directives that according to

the Supreme Court have statutory force. Detection of the acts of the petitioners, who were final sanctioning authorities for Bank loans, was not only highly improbable, rather impossible, till occurrence of the 'event' of NPAs, before which, there was even no occasion for the respondent bank to look into that aspect.

64. On the judgments relied upon by the petitioners, it is stated by Ms. Bajaj that the same are distinguishable on facts as in none of the cases, cited as precedent by the petitioners, the Courts had the occasion to deal with the argument distinguishing the 'event' from the 'acts'. Rather, in all cases, 'acts' have been taken as 'event' with no dispute or opposition from any side. Any observations in these judgements on this aspect, constitute only *obiter-dictum* and not the derivable *ratio* on the point in dispute in the cases at hand. In addition, in all the four cases, it was not the plea of the respondent Bank that misdeeds of the Petitioners therein were not in the knowledge of the bank during four years interval between the deeds and the charge sheet. In contrast, in the 3 cases in hand, the respondent Bank has specifically pleaded and shown that the misdeeds of the petitioners had remained under carpet and hidden till the mandatory and statutory inquiry was conducted by the bank, after the loan accounts had gone bad.

65. That apart, Ms. Bajaj also submitted that the charge sheets and the ensuing inquiries by the competent authority, having found the explanations offered by the petitioners to the show-cause notices, grossly unsatisfactory, *per-se* causes no prejudice to the petitioners. In fact, they have all opportunity to show that the alleged charges are false or at least surreal.

66. Having heard the learned counsels for the parties, the issue which arises for consideration is whether in view of Regulation 48 of Pension Regulations, the departmental proceedings can be initiated against an employee who has retired from service of the respondent Bank in respect of an event which took place more than 4 years before the institution of such proceedings. To answer this question, it is necessary to reproduce the charges which have been framed against the petitioners in all three writ petitions by the respondent Bank as under:

“W.P.(C) 2846/2017

ARTICLES OF CHARGE

Sh. Baljit Singh Handa, Ex-DGM while working as AGM at ZO-II, New Delhi since 27.12.2010 to 31.03.2012 had committed various acts of omission & commission in the accounts of M/s. Rock Hudson Clothing (India) and M/s. Bankey Bihari Trading Co. at B/O Asaf Ali Road, New Delhi, who were sanctioned Cash Credit (Hyp) Facilities of Rs. 250 lacs vide AGMDP Sanction No. 149/11-12 dated 13.02.2012 and Rs. 350 lacs vide DGMDP Sanction No. 201/11-12 dated 30.03.2012 respectively as per Statement of allegations (Annexure-II).

His acts of sanctioning proposals in a casual manner constitutes grave misconduct in terms of Regulations 43 & 45 read with Regulation 48 of Punjab and Sind Bank Employees' Pension Regulations, 1995. He did not take all possible steps to ensure and protect the interest of the bank while exercising the powers conferred upon him and did not discharge his duties with utmost integrity, honesty, devotion and diligence. He also did not act in his best judgment while performing his official duties. The accounts turned NPA and Bank's huge funds are at stake. His acts of omission & commission has inflicted huge financial loss to the Bank. This amounts to negligence on his part under Punjab & Sind Bank Employees' Pension Regulations, 1995.

STATEMENT OF ALLEGATION

Sh. Baljit Singh Handa, Ex- DGM, while working as AGM, ZO-II, New Delhi, from 27.12.2010 to 31.03.2012 has allegedly committed various acts of omission & commission in the

accounts of M/s. Rock Hudson Clothing (India) and M/s Bankey Bihari Trading Co, at B/O Asaf Ali Road, New Delhi, who were sanctioned Cash Credit (Hyp) Facilities of Rs.250 lacs vide AGMDP Sanction No. 149/11-12 dated 13.02.2012 and Rs.350 lacs vide DGMDP Sanction No, 201/11-12 dated 30.03.2012 respectively. The property no. H-5/10 Krishna Nagar, Delhi mortgaged in the account of M/s Bankey Bihari Trading Co. at B/O Asaf Ali Road, Delhi was also mortgaged in the account of M/s Vee Kay International at B/O Rajendra Place, New Delhi with another set of Title Deeds which was later on found to be fake which facilitated the party to commit fraud. The accountability report showed serious lapses/negligence on part of Baljit Singh Handa, Ex-DGM, which was reviewed by the Review Committee of NPA cases on 15.09.2015 and it was decided to proceed against Sh, Baljit Singh Handa, Ex-DGM, who has been held accountable. Hence the cause of action accrued on 15.09.2015 requiring the Bank to initiate disciplinary action against him. The account has been declared as Fraud.

The details of lapses/irregularities committed by him are as under:-

1. He has approved the Cash Credit Facility to M/s Bankey Bihari Trading Co. of Rs.350 lacs on 30.03.2012 vide office note dated 30.03.2012 in the capacity of DGM though he was working as AGM on that date, with the intention to accommodate the party. Thus, he exceeded the discretionary lending powers in-violation of HO Guidelines Circulated vide HO CMPD Circular No. 1639 dated 01.04.2011, Hence, the facility sanctioned/approved by him was unauthorized
2. He approved/appraised the limits stipulating margin of 35% whereas the branch recommended margin of 40% against book debts in both the loan proposals of M/s Bankey Bihari Trading Co, and to M/s Rock Hudson Clothing (India).
3. He appraised and sanctioned CC limit of Rs.350 lacs to M/s Bankey Bihari Trading Co. within 45 days of sanctioning the first sanction of Rs.250 lacs to M/s Rock Hudson Clothing (India) without noticing that both the firms were practically owned by the same person (i.e., Nitin Kumar Arora), engaged in same business and in same locality.
4. He accepted the BM/Acct. Valuation certificate dated 07.12.2011 which was signed by BM only and without any address as well as description of the property.
5. He did not ensure that comparison of certified copy of title deeds with original, has been done by the branch and not get

certificate of the same from Branch Incharge to confirm the genuineness of the same. Hence, he did not act as a prudent Banker.

6, He failed to confirm/ensure that commercial CIBIL Report of the firms has been extracted before sanction of credit facilities. Further, no query was raised by him regarding two PAN ' numbers mentioned in CIBIL Report of Sh. Nitin Kumar Arora enq. Report no, 519859360 dated 02.02.2012, Page No. 2 ASTPA5315R, Page No.4 CDVPM7215F,

7. He failed to notice that too many enquiries in the CIBIL report of all the three family members, Large no. of enquiries in CIBIL reports was a sort of alert/ warning signal for making due diligence/market intelligence and careful scrutiny of the financial reports. KYC documents and documents of title submitted by the borrowers. Hence, he did not act as a prudent Banker,

8, He failed to give any justification for accepted lower Collateral Security (as required in terms of ID Circular No, 1639 dated 01.04.2011) in the appraisal note of M/s Rock Hudson Clothing.

9. The loan committee on 29.03.2012 recommended sanction of Rs,350 lacs to M/s Bankey Bihari Trading Co whereas party submitted letter for sanction of lower limit after one day on 30.03.2012, The lower limit was sanctioned by him without seeking any clarification/ensuring margin / arrangement of sources of funds by the party and the party was also not asked to submit revised projections,

10. The branch has proposed guarantee of father of proprietor and the same was readily accepted by the Zonal Office. He failed to insist the branch to submit independent/third party guarantee in the account of M/s Rock Hudson Clothing, He failed to ensure/obtain the confirmation of registration of properties mortgaged under CERSAI by the branch. Thus, he failed to protect the interest of the Bank,

11. He failed to raise even a single query from the date of submission of loan proposal to the date of sanction in the account of M/s Bankey Bihari Trading Co,

12. He failed to ensure compliance of pre-disbursement condition stipulated in the sanction by the branch i.e., "BM to obtain documentary evidence and ensure that no loan is outstanding in any bank/FIs in the name of Guarantor Mr. Vinod Kumar before disbursement of credit facilities". Moreso, another limit of Rs,350 lacs sanctioned having same guarantor

without confirmation that no loan is outstanding in the name of Sh.Vinod Kumar Arora,

13. He failed to ensure that the appraisal note of M/s Rock Hudson Clothing (India) is placed before the Zonal Manager (Next higher Authority) for reviewal/concurrence as per HO Guidelines.”

“W.P.(C) 3910/2017

ARTICLES OF CHARGE

Sh. Prithipal Singh Sodhi, Ex-AGM (P02298) while working at Zonal Office Chandigarh w.e.f. 17.08.2010 to 14.01.2011 and at LHO Chandigarh during the period 15.01.2011 to 31.08.2012 in different capacities during relevant period has reportedly committed various acts of omission and commission in the accounts of M/s. Akriti Construction & Development Ltd., M/s. Sandeep & Co. and M/s.Gupta & Co. as per Statement of allegations. (Annexure- II).

He did not take all possible steps to ensure and protect the interest of the bank while exercising the powers conferred upon him and did not discharge his duties with utmost integrity, honesty devotion and diligence. He also did not act in his best judgment while performing his official duties.

STATEMENT OF ALLEGATIONS

Sh. Prithipal Singh Sodhi, Ex-AGM (P02298) while working at Zonal Office Chandigarh-I w.e.f 17.08.2010 to 14.01.2011 and at LHO Chandigarh during the period 15.01.2011 to 31.08.2012 in different capacities during relevant period, have reportedly committed certain lapses /irregularities in recommending to respective sanctioning authorities for credit facilities in the following accounts:

(A). M/S AKRITI CONSTRUCTIONS (P) LTD. - SECTOR 47, CHANDIGARH

The captioned party's enhancement proposal for ODP limit from Rs. 14.70 Crore to Rs. 22.10 Crore and BG limit from Rs. 3.50 Crore to Rs.10.00 Crore was sanctioned vide ED Sanction No.R-05/ll-12 dated 18.04.2011. Party availed revised ODP Limit of Rs.22.10 Crore which exceeded maximum upto Rs.23.55 Crore as on 04.05.2011. Sh. Inderjit Singh, the then BM BO Sector 47 vide letter dated 10.06.2011 addressed to ZO Chandigarh-I confirmed that he had allowed the party to avail the limit on 18.04.2011 without obtaining Title Deed/Sale Deed of the property at House No. 3048 Sector 20-D, Chandigarh (2

Kanal house in the name of Sh. T.L. Singla) valuing Rs.447.30 Lacs, mentioned in sanction letter dated 18.04.2011. He further informed that party has deposited two Title Deeds of Dehradun property to replaced the above mentioned property at House No.3048, Sector-20-D Chandigarh and has also deposited the overdrawn amount on 10.06.2011 hence the proposal is being submitted to the Competent Authority for substitution of property to be taken as security.

Following lapses / irregularities have been reported on the part of above named in conduct of this account:

1. An appraisal Note dated 13/16.09.2011 was sent by ZO Chandigarh-I to LHO Chandigarh, proposing / recommending the changes in the margin requirements and reduction of BG limit from Rs.3.50 Crores to Rs.1.80 crores, while showing the existing ODP limit as Rs. 14.70 crores (instead of Rs.22.10 crores) and proposed ODP limit shown at the same level of Rs.14.70 crores. In this note the only seven (7) out of eight (8) properties as per sanction dated 18.04.2011 were shown. The property of H.No.3048 Sector 20-D, Chandigarh (2 Kanal house in the name of Sh. T. L. Singla) valuing at Rs.447.30 lacs was not referred in this note.

This appraisal note was prepared within six months of ED sanction dated 18.04.2011. Though this proposal was not pursued further but subsequently, the credit facilities were reduced vide ED Sanction No.ED-R74/l 1-12 dated 23.11.2011 to ODP limit of Rs 22.00 crore and BG limit for Rs.2.00 crore on his recommendations contained in GM LHO Appraisal Note dated 29.09.2011.

The CSO has concealed the facts from the sanctioning authority that the ED Sanction dated 18.04.2011 for ODP Limit of Rs.22.10 Crore has already been availed and thereafter part amount have been deposited in the account. He did not disclose the facts to the sanctioning authority that the BM has violated the terms and conditions of the previous sanction dated 18.04.2011.

2. He while recommending loan proposal to HO Advances Department vide GM LHO Appraisal Note dated 29.09.2011 for sanctioning of ODP limit of Rs.22.00 Crore and BG limit of Rs. 2.00 Crore with reduction in margin requirements from 35% to 25% within six month of the earlier ED sanction No. ED-R-05/l1-12 dated 18.04.2011, failed to give any justification /valid and convincing reason. This Appraisal Note was prepared just after 13 days of receiving the Appraisal Note dated

13/16.09.2011, wherein, the Zonal Manager had requested only for "Rearrangement of Credit Facilities" and asked for decrease in total exposure from Rs.18.70 crores to Rs.16.88 crores. This Zonal Office Appraisal Note also indicated that the securities presently mortgaged to the Bank are of only Rs.29.57 crores against the securities of Rs.34.05 crores as stipulated in ED Sanction No. ED-R-05/11-12 dated 18.04.2011. No comments regarding skipping/omitting security valuing Rs.4.47 crores relating to the house No.3048, Sector 20-D Chandigarh had been given by ZM in this Appraisal Note.

3. In the said GM (LHO) Appraisal Note dated 29.09.2011, he mentioned the existing credit facilities as per earlier GM Sanction no. 139/2009-10 dated 13.03.2010, instead of credit facilities as per latest sanction, i.e., ED sanction NO. ED-R-05/11 dated 18.04.2011. He was well aware of the fact that the credit facilities as per ED sanction No. ED-R-05/11-12 dated 18.04.011, had already been released by the BM to the borrower on 18.04.011 itself without taking Security of House No. 3048 Sector 20-D Chandigarh (valuing Rs.4.47 Crore as per BM/Acctt. valuation report) though the Zonal Office conveyed this sanction to the branch vide their letter dated 21.04.2011. Thus, he concealed / misreported the facts to the Sanctioning Authority.

4. He failed to scrutinize the search reports while recommending proposal for sanctioning the ODP limit of Rs.22.10 Crores and BG limit of Rs. 10 Crores, which were sanctioned vide ED sanction dated 18.04.2011. The search reports reveal that property House No. 3048 Sector 20 D Chandigarh was already mortgaged with SBI Specialized Commercial Branch Sector 17-B Chandigarh on 31.03.2011.

5. He failed to cross check the search reports to ensure whether the charge of ODP limit of Rs. 22.10 Crores allowed to the party on 18.04.2011 had been registered or not. The fact remains that the charge on securities related with ODP limit of RS. 22.10 Crore allowed on 18.04.2011 to the party was never registered with ROC.

6. He failed to scrutinize the Search Reports of the company before sending the proposals to HO, to verify the genuineness, authenticity and correctness of the financial papers of the company submitted by the party.

7. Search Reports of the company were not scrutinized by him before forwarding the proposals to HO, to verify the status of various charges on the properties already created by the party. As per search report dated 20.05.2013 of CA Malhotra Rajiv & Co., the property bearing Plot No.286, Industrial Area - II Panchkula in the name of Sh. T.L. Singla valuing Rs.440 lacs which was mortgaged to the bank on 13.08.2012 had already been mortgaged to SBI on 31.03.2011.

8. Search Reports of the company not scrutinized before sending the proposals to HO, to verify the status of present credit facilities being availed by the party. As per search report, the party was also availing CC Limit from SBI and PNB, this fact was not referred in our bank's appraisal notes.

9. He failed to ask / insist for CIBIL reports, KYC documents of borrowers and guarantors to ascertain their credentials and credit track record.

10. He failed to ask I insist for stock audit report and Credit Audit Report.

11. He did not ensure credit rating from outside agency.

12. He failed to scrutinize or call any clarifications from BM / ZM as the party's account statement reveals that most of the time the balance outstanding in the account has been beyond sanctioned limit.

13. He failed to bring to the knowledge of the higher /sanctioning authority the fact regarding frequent over drawn position of the party's accounts beyond sanctioned limit on account of frequent accommodation given to the party by then BM. Thus, despite the fact that party's accounts were not regular, he recommended enhancement of limits and also failed to take any action against the BM in this regard.

14. There is no record of providing ad hoc/temporary over drawings to the Party, as such the Ad hoc /overdrawing allowed to the party were unauthorized and he failed to bring the Sanctioning Authority.

15. He failed to ensure the actual values of the properties recommended /proposed to be 'mortgaged in the account

before recommending the proposal, to the sanctioning authority. The properties were over-valued as the latest valuations got done by the branch indicate that the nine properties mortgaged in the account are of value of Rs.12.25 crores, though in ED Sanction NO. ED-R74/11-12 dated 23.11.2011, the value of nine properties is shown as Rs. 31.30 Crores. Thus, he while recommending the proposal accepted the inflated value of the properties as securities resultantly facilitating the sanction of higher limit to the party.

16. Despite the fact that the account had been running irregular, He recommended the said proposal.

17. BM/Acctt valuation report as per Law Circular No. 183, ascertaining the genuineness and bonafide of the properties were not accompanied with the proposal and he failed to call the same from 20/B0.

18. He did not ensure the compliance of all the indispensable requirements and term and conditions of earlier sanctions before recommending the proposal.

(B). M/S SUNDEEP&CO. -ODP A/C, BO SECTOR 47, CHANDICARH

The then BM Sh. Inderjit Singh on 30.12.2011 initially sent the proposal with due recommendations for sanctioning of BG limit of Rs. 15.00 crores to ZO Chandigarh. This proposal was though not sanctioned. On 23.04.2012, the BM again sent another loan proposal with recommendations to ZO Chandigarh for the sanction of ODP limit of Rs. 20 crores. Then new BM, Sh. Kamaljit Singh, vide his letter dated 11.06.2012 had written to the Zonal Office Chandigarh that in view of request dated 04.06.2012 of the party, the ODP limit for Rs. 11.60 be sanctioned. The limit of Rs. 11.60 crores was sanctioned vide GM LHO Sanction No.26/2012-13 dated 14.06.2012. The ODP limit was released on 18.06.2012 (during the tenure of new BM Sh. Kamaljit Singh).

Sh Prithipal Singh, being a member of LHO Credit Approval Committee in the capacity of Chief Manager & in-charge of Credit Deptt LHO Chandigarh, allegedly committed following lapses / irregularities while approving / sanctioning the said ODP facility:-

1. The proposal was not sanctioned with due diligence.

2. He being member of LHO Credit Approval committee accepted Provisional Sales Figures of Rs. 80.00 crore and Projected Sales figures of Rs.200.00 crore & Rs.225.00 crore for the years 2011-12, 2012-13 and 2013-14 respectively against the audited figures of Rs. 8.74 crore and Rs. 9.17 crore for the years 2009-10 and 2010-11 respectively vide LHO Credit approval committee Note dated 13.06.2012/14.06.2012. Thus, unrealistic sales projections, which were 20 times higher than the last audited figures, were accepted, thereby facilitating the borrower availing a higher limit.

3. As per account statement, the transactions were not commensurate with the estimated turnover in the account. As there was no credit in the account after 27.08.2012 and the account was running continuously above sanctioned limit after 31.08.2012, the same was classified as NPA on 31.12.2012. As such the account comes under Quick Mortality category.

4. He did not ensure credit rating from outside agency.

5. H failed to note that CIBIL, reports of borrowers and guarantors were not drawn by the branch. He also failed to get the same drawn at ZO /LHO level to ensure the creditability of the borrowers and guarantors.

6. He did not ensure that the branch proposal was accompanied with BM/Acct. valuation report as per Law Circular No. 183.

7. He failed to ensure the actual values of the properties proposed/recommended to be mortgaged in the account before approving / sanctioning the said ODP facility. The properties were over-valued as the latest valuations got done by the branch indicate that the said properties mortgaged in the account are of value of Rs.12.85 crore. though in GM LHO Sanction No.26/2012-13 dated 14.06.2012. the value of the properties was shown as Rs.49.37 Crore. Thus, he while approving / sanctioning the proposal accepted the inflated value of the properties as securities, resultantly facilitating the sanction of higher limit to the party.

(C). M/S GUPTA&CO- ODP LIMIT -BO SFXTOR 47, CHANDIGARH.

The party was sanctioned ODP limit of Rs.10.00 crore vide ZMDP No. 117/10-11 dated 06.12.2010 on the recommendations of the proposal by Inderjit Singh, then BM. Within six months of the first sanction dated 06.12.2010, the BM moved the proposal for enhancement of limit from Rs.10.00 crore to Rs. 15.00 crore vide his letter dated 18.05.2011 on the ground that party was facing shortage of funds for completing the various projects. The ODP limit was enhanced to Rs.14.00 Crore from Rs.10.00 crore vide GM (LHO) Sanction NO. 53/11-12 dated 30.08.2011. A BG limit of Rs. 4.00 crore was also sanctioned by GM (LHO) vide Sanction NO.01/2012-13 dated 02.04.2012. He being member /convener of LHO Loan Recommendatory Committee recommended the ODP facility to the Sanctioning Authority. GM (LHO) vide office notes dated 25.08.2011 and 29.08.2011. He also recommended BG limit of Rs. 4.00 Crore as appraising / member of Loan Recommendatory Committee vide Office Notes dated 29.03.2012 and 30.03.2012 to the Sanctioning Authority.

While recommending the said proposals, he allegedly committed following lapses /irregularities;

- 1. The proposals were recommended for sanction without due diligence.*
- 2. He failed to accord reason /justification for reduction in margin requirements from 61% to 45%, within six month of the earlier sanction.*
- 3. He failed to call Credit Audit Report, Stock Audit Report and Stock Statements from the ZO / Branch.*
- 4. He failed to note that the account /unit were not rated from outside agency and no query in this regard was raised from the ZO / Branch.*
- 5 He failed to call pre sanction visit reports from BM.*
- 6. The operations in the account were negligible. The turnover of the account did not commensurate with the sales shown in financial papers. He failed to take note of this before sanctioning the said credit facilities.*
- 7. He failed to ensure the CIBIL reports of the borrowers / guarantors to ascertain their credentials and track record.*
- 8. He failed to ensure BM/Acctt valuation report as per H.O. Law Circular No. 183 dated 12.05.2006.*

9. As per Appraisal Note dated 01.12.2010 the audited net sales for the year 2007-08, 2008-09, 2009-10 are Rs.51.20 lacs. Rs.44.82 lacs and Rs.42.56 lacs, but the projected sales for the year 2010-11 and 2011-12 has been shown as Rs.100.00 Crore and Rs.120.00 Crore. Thus, higher sales projections were accepted thereby extending undue benefit to the party in the shape of higher limits.

10. He failed to ensure the actual values of the properties before recommending for sanctioning the said credit facilities. The properties were over-valued at the time of sanction as the latest valuations got done by the branch indicate that the said properties mortgaged in the account are of value of Rs.13.00 crore though in CM LHO Sanction No. 01/2012-13 dated 02.04.2012, the value of the properties are shown as Rs. 31.72 crores. Thus, He recommended the inflated value of the properties as securities, resultantly facilitating the borrower with sanction of higher limit.”

“W.P(C) 3915/2017

ARTICLES OF CHARGE

Sh. Ravinder Gosain, Ex-General Manager while working as Zonal Manager, ZO Chandigarh-I during the period from 28.02.2009 to 23.12.2010 and as In-charge of LHO, Chandigarh from 27.12.2010 to 17.10.2012, has reportedly committed various acts of omission & commission in the accounts of M/s Akriti Constructions & Development (P) Ltd., M/s Gupta & Co. and M/s Sundeep & Co.

He did not take all possible steps to ensure and protect the interest of the bank while exercising the powers conferred upon him and did not discharge his duties with utmost integrity, honesty, devotion and diligence. He also did not act in his best judgement while performing his official duties. This amounts to negligence on his part under Punjab & Sind Bank (Employees') Pension Regulations, 1995.

STATEMENT OF ALLEGATIONS

Sh. Ravinder Gosain, Ex-General Manager, while working as Zonal Manager, ZO Chandigarh-I during the period from 28.02.2009 to 23.12.2010 and as In-charge of LHO, Chandigarh from 27.12.2010 to 17.07.2012, reportedly committed various acts of omission & commission, as enumerated hereunder, in the following accounts:

(A) M/S Akriti Constructions (P) Ltd. - Sector 47, Chandigarh

The captioned party was sanctioned ODP limit of Rs. 22. 10 Crore and BG Limit of Rs.10.00 Crore vide ED Sanction No.R-05/11-12 dated 18.04.2011 on his recommendations. Further, an Appraisal Note dated 13/16.09.2011 was sent by ZO Chandigarh to LHO Chandigarh, proposing /recommending the changes in the margin requirements and reduction of BG limit from Rs.3.50 crores to Rs.1.80 crores, while showing the existing ODP limit as Rs 14.70 crores (instead of Rs.22.10 crores) and proposed ODP limit shown at the same level of Rs.14.70 Crores. In this note, only seven (7) out of eight (8) properties as per sanction dated 18.04.2011 were shown. The property of H.No.3048 Sector 20-D, Chandigarh (2 Kanal house in the name of Sh. T. L. Singla) valued Rs.447.30 lacs was not reported in the note was prepared within six months of ED sanction dated 18.04.2011. Though this proposal was not pursued further but subsequently, the credit facilities were reduced vide ED Sanction No. ED-R74/11-12 dated 23.11.2011 to ODP limit of Rs.22.00 crore and BG limit of Rs. 2.00 Crore on his recommendations contained in GM LHO Appraisal Note dated 29.09.2011.

Following lapses / irregularities on his part have been reported in conduct of the account:-

I. He while recommending the loan proposal to HO Advances Department vide CM. LHO Appraisal Note dated 29.09.2011 for sanctioning of ODP limit of Rs.22.00 crores BG limit of Rs.2.00 crores with reduction in margin requirements from 35% to 25% within six month of the earlier ED Sanction No. ED-R-05/11-12 dated 18.04.2011, failed to give any justification / valid and convincing reason. This Appraisal Note was prepared just after 13 days of receiving the Appraisal Note dated 13/16.09.2011, wherein the Zonal requested only for "Re-arrangement of Credit Facilities" and asked for decrease in total exposure from Rs. 18.70 Crores to Rs. 16.88 Crores. This Zonal Office Appraisal Note also indicated that the securities mortgaged to the Bank were of only Rs.29.57 Crores against the securities of Rs.34.05 Crores stipulated in Sanction No. ED-R-05/11-12 dated 18.04.2011. No comments regarding skipping / omitting security valuing Rs.4.467 Crores relating to the house No. 3048, Sector 20-D Chandigarh had been given by ZM in this Appraisal Note. This issue was

also not raised by the GM LHO in their letter dated 17.09.2011 written to ZO Chandigarh in response to the above-referred Appraisal Note dated 13/16.09.2011 of ZO Chandigarh.

2. In the GM(LHO) Appraisal Note dated 29.09.2011, he mentioned the existing credit facilities as per earlier CM Sanction No. 139/2009-10 dated 13.03.2010, instead of credit facilities as per latest sanction i.e. ED sanction No.ED-R-05/11 dated 18.04.2011. He was well aware of the fact that the credit facilities as per ED sanction No.ED-R-05/11-12 dated 18.04.2011, had already been released by the BM to the borrower on 18.04.2011 itself without taking Security of House No.3048 Sector 20-D Chandigarh (valuing Rs.4.47 crore as per BM/Acctt. valuation report) though the Zonal Office conveyed this sanction to the branch vide their letter dated 21.04.2011. Thus, he concealed I misreported the facts to the Sanctioning Authority.

3. He failed to direct the ZM Chandigarh to initiate action against the BM, Sh. Inderjit Singh, inspite of knowing the fact that BM, Sh. Inderjit Singh allowed availment of sanctioned limit of Rs.22.10 crores without taking the Sale deeds of House No.3048 Sector 20-D Chandigarh into custody.

4. He failed to scrutinize the search reports while recommending the proposal for sanction of ODP limit of Rs.22.10 crores and BG limit of Rs.10.00 crores, which were, sanctioned vide ED sanction dated 18.04.2011. The search reports reveal that property House No.3048, Sector 20-D, Chandigarh was already mortgaged with SBI Specialized Commercial Branch, Sector 17-B, Chandigarh on 31.03.2011.

5. He failed to cross check the search reports to ensure whether the charge of ODP limit of Rs.22.10 crores allowed to the party on 18.04.2011 had been registered or not. The charge of ODP limit was never registered with ROC.

6. He failed to scrutinize the Search Reports of the company before sending the proposals to HO, to verify the genuineness, authenticity and correctness of the financial papers of the company submitted by the party.

7. Search Reports of the company were not scrutinized by him before forwarding the proposals to HO, to verify the status of various charges on the properties already created by the party. As per search report dated 20.05.2013 of M/s Malhotra Rajiv & Co., CA; the property bearing Plot No.286, Industrial Area-11, Panchkula, in the name of TL Singla valued Rs.440.00 lacs which was mortgaged to the bank on 13.08.2012 had already been mortgaged to SBI on 31.03.2011.

8. Search Reports of the company not scrutinized before sending the proposals to HO, to verify the status of present credit facilities being availed by the party. As per search report, the party was also availing CC Limit from SBI and PNB, this fact was not referred in our bank's appraisal notes.

9. He failed to ask / insist for CIBIL reports, KYC documents of borrowers and guarantors to ascertain their credentials and credit track record.

10. He failed to ask /insist for stock audit report and Credit Audit Report,

11. He did not ensure credit rating from outside agency.

12. He failed to scrutinize or call any clarifications from BM / ZM as the party's account statement reveals that most of the time the balance outstanding in the account has been beyond sanctioned limit.

13. He failed to bring to the knowledge of the higher / sanctioning authority the fact regarding frequent over drawn position of the party's accounts beyond sanctioned limit on account of frequent accommodation given to the party by then BM. Thus, despite the fact that party's accounts were not regular, he recommended enhancement of limits and also failed to take any action against the BM in this regard.

14. There is no record of providing ad-hoc/temporary over drawings to the party, as such the adhoc / overdrawing allowed to the party were unauthorized and he failed to bring the fact to the knowledge of Sanctioning Authority.

15. He failed to ensure the actual values of the properties proposed/ recommended to be mortgaged in the account before recommending the proposal to the Sanctioning Authority. The value of nine properties is shown in ED Sanction No.ED-R74/11-12 dated 23.11.2011 as Rs.31.30 crores. The latest valuations got done by the branch in 2013 show that the nine properties mortgaged in the account are of value of Rs.12.25 crores. Thus, he while recommending the proposal accepted the inflated value of the properties as securities resultantly facilitated the sanction of higher limit to the party.

16. Despite the fact that account had been running irregular, he recommended enhancement of limits, time and again.

17. BM/Acctt valuation report as per HO Law Circular No.183 dated 12.05.2006, ascertaining the genuineness and bonafide of the properties were not accompanied with the proposal and he failed to call the same from ZO/BO.

18. He did not ensure the compliance of all the indispensable requirements and terms & conditions of earlier sanctions before recommending the proposal.

(B) M/s SUNDEEP&CO. -ODP A/C, BO SECTOR 47, CHANDIGARH.

A note dated 13/14.06.2012 for sanction of the ODP Limit of Rs. 11.60 Crore to M/s Sundeep & Co. was placed before LHO Credit Approval Committee headed by him, which was approved/sanctioned by him on 14.06.2012.

He being Chairperson of LHO Credit Approval Committee allegedly committed following lapses/ irregularities while sanctioning the ODP facility in the said account:-

1. The proposal was not sanctioned with due diligence.

2. He being Chairperson of LHO Credit Approval Committee accepted unrealistic Provisional Sales figures of Rs.80.00 crore and Projected Sales figures of Rs. 200.00 crore & Rs. 225.00 crore for the years 2011-12, 2012-13 and 2013-14 respectively against the audited figures of Rs. 8.74 crore and Rs. 9.17 crore for the years 2009-10 and 2010-11 respectively. Thus, unrealistic sales projections, which were more than 20 times the last

audited figures, were accepted and facility of higher limit to the tune of Rs. 11.60 Crore was sanctioned.

3. He did not ensure credit rating from outside agency.

4. He failed to note that CIBIL reports of borrowers and guarantors were not drawn by the branch. He also failed to get the same drawn at ZO / LHO level to ensure the creditability of the borrowers and guarantors.

5. He did not ensure that the branch proposal was accompanied with BM/Acct. valuation report as per HO Law Circular No. 183 dated 12.05.2006.

6. He failed to ensure the actual value of the properties proposed/ recommended to be mortgaged in the account before approving / sanctioning the proposal. The value of the properties is shown in CM LHO Sanction No.26/2012-13 dated 14.06.2012 as Rs.49.37 crores. The latest valuations got done by the branch in 2013 show that the said properties mortgaged in the account are of value of Rs. 12.85 crores. Thus, he while approving / sanctioning the proposal accepted the inflated value of the properties as securities, resultantly facilitating the sanction of higher limit to the party.

7. (a) As per account statement, the transactions in the account were not commensurate with the estimated turnover.

(b) There was no credit in the account after 27.08.2012 and the account was running continuously above sanctioned limit after 31.08.2012. As against the sales estimate of Rs.200.00 Crore for the year 2012-13 there were only five (5) credit entries amounting to Rs.25.00 Lacs. Further, there is no operation in the account since 01.09.2012 except the debit of interest entries.

c) The account was classified as NPA on 31.12.2012.

d) As such the account comes under Quick Mortality category and Bank's huge funds are at stake.

8. The above acts of omission & commission on his part show that he did not act as a prudent Banker and did not

exercise due diligence as head of the LHO Approval Committee.

(C) M/s GUPTA & CO. -BO SECTOR 47, CHANDIGARH.

The party was sanctioned ODP limit of Rs. 10.00 crores vide ZMDP Sanction No. 117/2010-11 dated 06.12.2010. Within nine months of the this sanction the ODP limit was enhanced to Rs. 14.00 Crore from Rs. 10.00 Crore vide GM (LHO) Sanction No.53/2011-12 dated 30.08.2011. BG limit of Rs. 4.00 crore was also sanctioned by GM (LHO) vide his Sanction No.01/2012-13 dated 02.04.2012. He being Sanctioning Authority committed the following lapses / irregularities:-

- 1. The proposals were not sanctioned with due diligence.*
- 2. He failed to accord reason / justification for reduction in margin requirements from 61% to 48%, within six months of the earlier sanction.*
- 3. He failed to call Credit Audit Report, Stock Audit report and Stock statement from the ZO / Branch.*
- 4. He failed to note that the account / unit was not rated from outside agency and no query in this regard was raised from the ZO / Branch.*
- 5. He failed to call pre sanction visit reports by ZM/ BM / Acctt.*
- 6. The operations in the account were negligible. The turnover of the account did not commensurate with the sales shown in financial papers. He failed to take note of this before sanctioning the said credit facilities.*
- 7. He failed to ensure the CIBIL reports of the borrowers / guarantors to ascertain their credentials and track record.*
- 8. He failed to ensure BM/Actt. Valuation report as per HO Law Circular No. 183 dated 12.05.2006.*
- 9. As per Appraisal Note, the audited net sales for the year 2007-08, 2008-09, 2009-10 are Rs.51.20 lacs, Rs.44.82 lacs and Rs.42.56 lacs respectively, but the projected sales for the year 2010-11 and 2011-12 has been shown as Rs. 100.00 Crore and Rs. 120.00 Crore respectively. Thus, higher sales projections were*

accepted thereby extending undue benefit to the party in the shape of higher limits.

10. He failed to ensure the actual values of the properties before sanctioning the said credit facility. The value of the properties in GM LHO Sanction No.01/2012-13 dated 02.04.2012 was shown as Rs. 31.72 crores. The latest valuations got done by the branch in 2013 show that the said properties mortgaged in the account are of value of Rs. 13.00 crore. Thus, he while sanctioning the proposals accepted the inflated value of the properties as securities resultantly facilitated the borrower with sanction of higher limit.

Consequently, the accounts turned Non Performing Asset (NPA) and Bank's huge funds are at stake."

67. The plea of Mr. Vivek Singh is primarily based on the Judgment of this Court in the case of ***Harpreet Singh Makkar (supra)*** which has been upheld by the Division Bench of this Court in the case titled as ***Punjab and Sindh Bank (supra)***. It was the submission of Mr. Singh that as the subject matter of the departmental proceedings initiated against the petitioners is primarily related to the fact that the petitioners herein have sanctioned the cash credit facilities for two accounts (in W.P.(C) 2846/2017), sanction of enhancement of ODP limits, sanction of BG limit (in W.P.(C) 3910/2017 and W.P.(C) 3915/2017) before their respective retirements, which is beyond the period of four years from the date of the issuance of the impugned charge sheets in the writ petitions as the charge sheets could not have been issued in view of Regulation 48(2) of the Pension Regulations.

68. On the other hand, the submission of Ms. Bajaj has been that it is not the subject matter of the charge which would be relevant to compute the period of limitation of 4 years under

Regulation 48(2) of Pension Regulations, but the ‘event’ of the credit facilities / accounts of the borrowers becoming NPAs, shall be the relevant date for computing the limitation of 4 years. In other words, it was her submission that it is the ‘acts’ of the petitioners which led to the accounts of the borrowers turning NPAs which triggered the initiation of the departmental proceedings against the petitioners. In support of her submission, she has sought to draw a distinction between the ‘act’ committed by the petitioners and the ‘event’ of accounts turning NPA (s). In substance, it is her plea that the ‘event’ of the accounts turning NPAs being within a period of 4 years preceding issuance of the charge sheets to the petitioners, the limitation as prescribed in Regulation 48(2) of Pension Regulations will not come into play.

69. I am not in agreement with the submission made by Ms. Bajaj for the simple reason that the word ‘event’ as stipulated in Regulation 48 (2) of Pension Regulations has to be seen from the perspective of the charges framed against the petitioners herein. As noted from the charges reproduced above, the subject matter of the same being that the petitioners prior to their retirement and also preceding the period of more than 4 years from the date of issuance of charge sheets have recommended (the dates of sanctioning being February 13, 2012, March 30, 2012 in respect of W.P.(C) 2846/2017; August 29, 2011, September 29, 2011, March 30, 2012 and June 14, 2012 in respect of W.P.(C) 3910/2017; and August 30, 2011, September 29, 2011, April 2, 2012 and June 14, 2012 in respect of W.P.(C) 3915/2017) sanction of cash credit facilities, enhancement of ODP limit and

sanction of BG limit. The accounts of the borrowers becoming NPA are not the subject matter of the allegations in their respective charge sheets. Hence, the facilities / accounts sanctioned by the petitioner may have turned NPAs but since the very subject matter of the charges is with regard to sanction given by the petitioners for such loans, the plea is unsustainable. It can also be said that the facilities / accounts turning NPAs can be because of the borrowers having failed to re-pay the loans / credits availed and such a charge surely cannot be imputed against the petitioners. If that be so, the limitation of four years has to be necessarily seen from the date when the sanction was given by these officers / petitioners for various facilities which resulted in the accounts becoming NPA.

70. In this regard, in a tabular form, I shall reproduce the relevant dates as under:

W.P.(C) 2846/2017

<i>Date of retirement</i>	<i>Issuance of Charge sheet</i>	<i>Date of alleged event as per the charge sheet</i>	<i>Years after the event, the chargesheet was issued</i>
<i>October 31, 2012</i>	<i>August 22, 2016</i>	<i>February 13, 2012 and March 30, 2012</i>	<i>Approx. 4 years and 7, 4 years and 8 months respectively</i>

W.P.(C) 3910/2017

<i>Date of retirement</i>	<i>Issuance of Charge</i>	<i>Date of alleged event as per the</i>	<i>Years after the event, the</i>
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	<i>sheet</i>	<i>charge sheet</i>	<i>chargesheet was issued</i>
<i>August 31, 2012</i>	<i>November 15, 2016</i>	<i>August 29, 2011, September 29, 2011, March 30, 2012 and June 14, 2012</i>	<i>Approx. 5 years and 2 months, 5 years and 1 month, 4 years and 7 months, 4 years and 4 months respectively</i>

W.P.(C) 3915/2017

<i>Date of retirement</i>	<i>Issuance of Charge sheet</i>	<i>Date of alleged event as per the charge sheet</i>	<i>Years after the event, the chargesheet was issued</i>
<i>December 12, 2012</i>	<i>December 03, 2016</i>	<i>August 30, 2011, September 29, 2011, April 2, 2012 and June 14, 2012</i>	<i>Approx. 5 years 3 months, 5 years 2 months, 4 years 8 months, 4 years 5 months respectively.</i>

71. There is no dispute that the chargesheets having been issued to the petitioners on August 22, 2016, November 15, 2016 and December 3, 2016 in W.P.(C) 2846/2017, W.P.(C) 3910/2017 and W.P.(C) 3915/2017 respectively, which dates are surely beyond the period of four years from the date of sanction granted by the petitioners for the facilities and as such the limitation as prescribed in Regulation 48 (2) of Pension Regulations will come into play. It was also the submission of Ms. Bajaj that if the interpretation given by the petitioners is accepted, there can be no 'event' after retirement. Suffice to state, the respondent cannot

proceed for an ‘event’ happening post-retirement, when the petitioners had ceased to be the employees of the respondent. They can be proceeded only for an ‘event’ happened while they were in service. If departmental proceedings have not been initiated for misconduct while the employee is in service, he can be proceeded against within a period of 4 years of that ‘event’, i.e., the misconduct. So, the finding of lapses / negligence against the petitioners in the accountability report or by the Review Committee on NPA in 2015 in W.P.(C) 2846/2017; staff accountability reports dated January 29, 2014, February 6, 2014 and February 10, 2014 submitted before a Committee of three General Managers as per RBI norms in W.P.(C) 3910/2017 and W.P.(C) 3915/2017, cannot be said to be an event happened while the pensioners / petitioners were in service. Nor such an ‘event’ is contemplated in the Regulations to be proceeded against as is clear from the wordings in Regulation 48(1) “.....any pecuniary loss caused to the Bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service”. If the plea of Ms. Bajaj is accepted then it shall mean that any time after retirement, a pensioner can be proceeded against, without any limitation. Such an interpretation is contrary to the letter and spirit of the Pension Regulations that a pensioner can be proceeded against a misconduct committed by him in a definite time period and not, by keeping the sword hanging on his head for indefinite period. This issue of limitation for

initiating departmental proceedings is no more *res-integra* in view of the Full Bench Judgment of the Supreme Court in the case of ***Brajendra Singh Yambem v. Union of India, AIR 2016 SC 4107***, wherein the Supreme Court while, *inter alia*, dealing with a *pari materia* provision (Regulation 9 (2)(b)) under the CCS Rules, memorandum of charges / departmental proceedings initiated by the disciplinary authority after 10 years from the date of alleged incidents therein against the employee was quashed. The Supreme Court in paragraph 32 framed three questions and the first question / point no.1, is a question similar to the one which arises for consideration in this petition. The relevant paragraphs are reproduced as under:

“32. We have heard the learned Counsel appearing on behalf of both the parties. The following essential questions would arise for our consideration in the case:

1. Whether the impugned judgment and order passed by the Division Bench of the High Court correctly appreciates the scope of Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972 in light of the fact the disciplinary proceedings were initiated more than four years after the alleged incidents?

2. Whether the impugned judgment and order is erroneous and is vitiated in law?

3. What Order?”

XXXXXX

“34. The learned Counsel appearing on behalf of the Appellant has rightly placed strong reliance on Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972. It is an undisputed fact that the Appellant retired from service on 31.08.2006. The learned single Judge of the High

Court by way of judgment and order dated 18.05.2006 in Writ Petition No. 720 of 2002 quashed the disciplinary proceedings in the case pertaining to the missing arms and ammunitions. However, liberty was granted to the Disciplinary Authority/Enquiry Officer to conduct the disciplinary enquiry afresh after supplying the copies of the proceedings of the enquiry to the Appellant. The said judgment and order of the single Judge was challenged by the Respondents by way of Writ Appeal No. 45 of 2006, in which the Division Bench, by judgment and order dated 07.11.2006 upheld the order of the single judge of the High Court. It was only pursuant to this that the fresh memorandum of charges dated 22.08.2008 was issued to the Appellant, which was clearly beyond the period of limitation of four years as provided for under the CCS (Pension) Rules, 1972. Similarly, in the case involving the contraband ganja, the single Judge of the High Court by way of judgment and order dated 16.06.2006 passed in Writ Petition No. 805 of 2005 quashed the departmental enquiry under the memorandum of charges dated 14.05.1998. The Division Bench dismissed the Writ Appeal No. 25 of 2007 filed by the Respondents vide judgment and order dated 13.11.2008 and upheld the order of the learned single Judge. It was pursuant to this that the fresh departmental enquiry was initiated against the Appellant on 16.10.2009 after obtaining sanction from the President of India under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972. The Appellant challenged the correctness of the sanction and charges framed against him before the High Court of Gauhati, Imphal Bench in W.P. (C) No. 264 of 2010. The High Court quashed the Memorandum of Charges on the ground that it was issued after four years from the date of the alleged incident. Therefore, it was held that the said action of the Disciplinary Authority in initiating disciplinary proceedings is not valid in law as the same was barred by limitation as per the provision of Rule 9(2)(b)(ii) of the CCS (Pension) Rules 1972. This important legal aspect of the case was not considered by the Division

Bench of the High Court while setting aside the common judgment and order dated 01.09.2010 passed by the learned single Judge in Writ Petition No. 904 of 2008 (arms and ammunitions case) and Writ Petition No. 264 of 2010 (contraband ganja case). ”

72. The Supreme Court in ***Brajendra Singh Yambem (supra)*** had also relied on its earlier judgment in the case of ***State of UP v. Sri Krishna Pandey, (1996) 9 SCC 395*** wherein, in Para 6, it was held as under:

“6. It would thus be seen that proceedings are required to be instituted against a delinquent officer before retirement. There is no specific provision allowing the officer to continue in service nor any order passed to allow him to continue on re-employment till the enquiry is completed, without allowing him to retire from service. Equally, there is no provision that the proceedings be initiated as disciplinary measure and the action initiated earlier would remain unabated after retirement. If Rule 351-A is to be operative in respect of pending proceedings, by necessary implication, prior sanction of the Governor to continue the proceedings against him is required. On the other hand, the rule also would indicate that if the officer caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty then proceedings should also be instituted after retirement against the officer as expeditiously as possible. But the events of misconduct etc. which may have resulted in the loss to the Government or embezzlement, i.e., the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before lapse of four years from the date on which the event or misconduct etc. had taken place. Admittedly, in this case the officer had retired on March 31, 1987 and the proceedings were initiated on April 21, 1991. Obviously, the event of embezzlement

which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the provision of Rule 351-A of the rules. This order does not preclude proceeding with the investigation into the offence and taking action thereon.”
(emphasis supplied)

73. Mr. Singh is justified in relying upon the Judgment of this Court in the case of **Harpreet Singh Makkar (supra)** wherein in Para 9, while dealing with Regulation 48 of the Pension Regulations this Court has held as under:

“9. A perusal of Regulations 43 and 45, no doubt, would reveal that they are related to withholding or withdrawal of pension for a grave misconduct. In other words, the departmental proceedings can be initiated for the purpose of withholding or withdrawal of pension if the pensioners are convicted for a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct. At the same time, Regulation 48 also contemplates withholding or withdrawal of pension, whether permanently or for specified period, and order recovery from pension of the whole or part of pecuniary loss caused to a bank if in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of service. Regulation 43 stipulates, withholding or withdrawal of pension for the reasons stated therein. Regulation 45 prescribes the procedure to be followed before it is concluded that pensioner is guilty of grave misconduct. Regulation 48 contemplates withholding or withdrawal of pension and additionally, order recovery from pension of the whole or part of pecuniary loss, in the eventuality, the pensioner is found guilty of grave negligence or a misconduct, or criminal breach of trust,

or forgery or acts done fraudulently/ done during the period of service. Proviso (3) thereto is a clause relating to limitation inasmuch it stipules for 'no departmental proceedings for any event which took place more than four years before such institution'. Regulations 43 and 45 have to be read in conjunction with Regulation 48. Regulation 48 is not specific for recovery of pecuniary loss as urged by Mr. Arora, counsel for the respondent. It also contemplates withholding or withdrawal of pension or a part thereof, whether permanently or for a specified period. I note, the charge sheet issued to the petitioners is in terms of Regulation 43 read with Regulations 45 and 48 of the Pension Regulations, 1995, hence, the submission of Mr. Arora is not sustainable on the face of the provisions under which, the charge sheets have been issued” (emphasis supplied)

74. I also note that the Judgment of **Harpreet Singh Makkar** (*supra*) was taken in appeal by the respondent Bank also wherein the Division Bench in **Punjab and Sind Bank** (*supra*) has upheld the conclusion drawn by this Court by holding as under:

“11. A perusal of Regulation 43 of the Punjab & Sind Bank (Employees) Pension Regulations 1959 makes it clear that the competent authority may withdraw or withhold full pension or part pension if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently. These grounds would relate to a conviction at a criminal trial. It also empowers the competent authority to withdraw or withhold full pension or part pension if the pensioner is found guilty of grave misconduct. The said Regulation deals with the power of the competent authority to levy the penalty on a pensioner. Regulation 48 deals with a different area concerning departmental proceedings. Sub-Regulation 1 is a near verbatim reproduction of Regulation 43. Sub-Regulation 2 of Regulation 48 curtails the power of the competent authority to initiate

departmental proceeding against a pensioner. As per the Sub-Regulation the departmental proceedings against a pensioner cannot be instituted in respect of an event which took place more than four years before such institution.”

75. That apart, I find that the Staff Accountability Reports dated November 28, 2014 (in W.P.(C) 2846/2017), January 29, 2014, February 4, 2014 and February 10, 2014 (in W.P.(C) 3910/217 and W.P. (C) 3915/2017) indicts the petitioners of their misdemeanor. In other words, the misconduct by the petitioners had come to the notice of the respondent Bank in the year 2014 itself. The respondent Bank could have initiated the disciplinary proceedings immediately thereafter to be well within the limitation of 4 years in terms of Regulation 48(2). Any procedure like issuance of show-cause notice to the petitioners seeking their reply and to follow the procedure to declare the A/cs, NPA surely will not extend the limitation nor such a power is contemplated under the Regulation 48(2). Moreover, it is a settled position of law as held by the Supreme Court in the case of ***Brajendra Singh Yambem (supra)*** that if the manner of particular act is prescribed under the Statute then the same must be done in that manner or not at all.

76. Accordingly, the present petitions are allowed. The chargesheets issued to the petitioners on August 22, 2016 (in W.P.(C) 2849/2017), November 15, 2016 (in W.P.(C) 3910/2017) and December 3, 2016 (in W.P.(C) 3915/2017) are quashed. No costs.

CM No. 12415/2017 in W.P.(C) 2846/2017

CM No. 17258/2017 in W.P.(C) 3910/2017

CM No. 17266/2017 in W.P.(C) 3915/2017

These applications are for stay. In view of the orders passed in the petitions, these applications have become infructuous and disposed of as such.

V. KAMESWAR RAO, J

FEBRUARY 01, 2021/jg

